

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 611
94TH GENERAL ASSEMBLY

Reported from the Committee on Governmental Accountability and Fiscal Oversight, March 29, 2007, with recommendation that the Senate Committee Substitute do pass.

2363S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 600.011 and 600.042, RSMo, and to enact in lieu thereof four new sections relating to the public defender system.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 600.011 and 600.042, RSMo, are repealed and four
2 new sections enacted in lieu thereof, to be known as sections 600.011, 600.042,
3 600.047, and 600.092, to read as follows:

600.011. The following words and phrases as used in this chapter have the
2 following meanings, unless the context otherwise requires:

3 (1) "Assigned counsel" [means], private attorneys who are hired by the
4 state public defender director to handle the cases of eligible persons from time to
5 time on a case basis;

6 (2) "Chief deputy director" [means], the attorney appointed by the
7 commission to assist the state public defender director and to exercise the duties
8 and powers of the director in his absence or upon his resignation;

9 (3) "Commission" [means], the public defender commission;

10 (4) "**Contract counsel**", private attorneys hired by the state public
11 **defender director under subsection 3 of section 600.047;**

12 (5) "Defender(s)", includes both attorneys which serve as staff attorneys
13 in the state defender system and assigned counsel who provide defense services
14 on a case basis, but does not include **contract counsel**, secretarial,
15 investigative, social service, or paraprofessional staff;

16 [(5)] (6) "Director" [means], the state public defender director;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 [(6)] (7) "Eligible person" [means], a person who falls within the
18 financial rules for legal representation at public expense prescribed by [section]
19 **sections 600.047 and 600.086;**

20 [(7)] (8) "State public defender system" [means], a system for providing
21 defense services to every jurisdiction within the state by means of a centrally
22 administered organization having a full-time staff **supplemented with**
23 **contract counsel under subsection 3 of section 600.047.**

600.042. 1. The director shall:

2 (1) Direct and supervise the work of the deputy directors and other state
3 public defender office personnel appointed pursuant to this chapter; and he and
4 the chief deputy director may participate in the trial and appeal of criminal
5 actions at the request of the defender or upon order of the commission;

6 (2) Submit to the commission, between August fifteenth and September
7 fifteenth of each year, a report which shall include all pertinent data on the
8 operation of the state public defender system, the costs, projected needs, and
9 recommendations for statutory changes. Prior to October fifteenth of each year,
10 the commission shall submit such report along with such recommendations,
11 comments, conclusions, or other pertinent information it chooses to make to the
12 chief justice, the governor, and the general assembly. Such reports shall be a
13 public record, shall be maintained in the office of the state public defender, and
14 shall be otherwise distributed as the commission shall direct;

15 (3) With the approval of the commission, establish such divisions,
16 facilities and offices and select such professional, technical and other personnel,
17 including investigators, as he deems reasonably necessary for the efficient
18 operation and discharge of the duties of the state public defender system under
19 this chapter;

20 (4) Administer and coordinate the operations of defender services and be
21 responsible for the overall supervision of all personnel, offices, divisions and
22 facilities of the state public defender system, except that the director shall have
23 no authority to direct or control the legal defense provided by a defender to any
24 person served by the state public defender system;

25 (5) Develop programs and administer activities to achieve the purposes
26 of this chapter;

27 (6) Keep and maintain proper financial records with respect to the
28 providing of all public defender services for use in the calculating of direct and
29 indirect costs of any or all aspects of the operation of the state public defender

30 system;

31 (7) Supervise the training of all public defenders, assistant public
32 defenders, deputy public defenders and other personnel and establish such
33 training courses as shall be appropriate;

34 (8) With approval of the commission, promulgate necessary rules,
35 regulations and instructions consistent with this chapter defining the
36 organization of his office and the responsibilities of public defenders, assistant
37 public defenders, deputy public defenders and other personnel;

38 (9) With the approval of the commission, apply for and accept on behalf
39 of the public defender system any funds which may be offered or which may
40 become available from government grants, private gifts, donations or bequests or
41 from any other source. Such moneys shall be deposited in the state general
42 revenue fund;

43 (10) Contract for legal services with private attorneys on a case-by-case
44 basis and with assigned counsel as the commission deems necessary considering
45 the needs of the area, for fees approved and established by the commission;

46 (11) With the approval and on behalf of the commission, contract with
47 private attorneys for the collection and enforcement of liens and other judgments
48 owed to the state for services rendered by the state public defender system.

49 2. No rule or portion of a rule promulgated under the authority of this
50 chapter shall become effective unless it has been promulgated pursuant to the
51 provisions of section 536.024, RSMo.

52 3. The director and defenders shall, within guidelines as established by
53 the commission and as set forth in subsection 4 of this section, accept requests
54 for legal services from eligible persons entitled to counsel under this chapter or
55 otherwise so entitled under the constitution or laws of the United States or of the
56 state of Missouri and provide such persons with legal services when, in the
57 discretion of the director or the defenders, such provision of legal services is
58 appropriate.

59 4. The director [and defenders] **or his or her designee** shall **assign a**
60 **defender or contract counsel** to provide legal services to an eligible person:

61 (1) Who is detained or charged with a felony, including appeals from a
62 conviction in such a case;

63 (2) Who is detained or charged with a misdemeanor which will probably
64 result in confinement in the county jail upon conviction, including appeals from
65 a conviction in such a case;

66 (3) Who is detained or charged with a violation of probation [or parole],
67 **except as provided in section 600.092;**

68 (4) Who has been taken into custody pursuant to section 632.489, RSMo,
69 including appeals from a determination that the person is a sexually violent
70 predator and petitions for release, notwithstanding any provisions of law to the
71 contrary;

72 (5) For whom, **in a case in which he or she faces a loss or**
73 **deprivation of liberty**, the federal constitution or the state constitution **or any**
74 **law of this state** requires the appointment of counsel; and

75 (6) [For whom, in a case in which he faces a loss or deprivation of liberty,
76 any law of this state requires the appointment of counsel;] However, **neither** the
77 director [and the], defenders, **nor contract counsel** shall [not] be required to
78 provide legal services to persons charged with violations of county or municipal
79 ordinances.

80 5. The director may:

81 (1) Delegate the legal representation of any person to any member of the
82 state bar of Missouri;

83 (2) Designate persons as representatives of the director for the purpose
84 of making indigency determinations and assigning counsel.

600.047. 1. The "Contract Indigent Defense Fund" is hereby
2 **created for the purpose of paying contract counsel to represent eligible**
3 **indigent persons:**

4 (1) Who are:

5 (a) Charged with a misdemeanor offense or a misdemeanor
6 probation violation, which will likely result in confinement in the
7 county jail and for which the federal or state constitution or any law
8 of this state requires the appointment of counsel. The provision of
9 legal services for such probation violation shall meet the requirements
10 of section 600.092;

11 (b) Charged with a violation of section 570.120, RSMo; or

12 (c) Parties in a criminal child support enforcement action that
13 will likely result in confinement in the county jail or imprisonment in
14 a correctional facility and for which the federal or state constitution or
15 any law of this state requires the appointment of counsel; or

16 (2) When a defender in the state public defender system has a
17 conflict of interest when providing legal services under subsection 4 of

18 **section 600.042.**

19 **The fund shall consist of moneys transferred from the state general**
20 **revenue fund. The state treasurer shall be custodian of the fund and**
21 **may approve disbursements from the fund in accordance with sections**
22 **30.170 and 30.180, RSMo. Upon appropriation, money in the fund shall**
23 **be used solely for the administration of this section. An amount equal**
24 **to the current fiscal year's appropriation shall be exempt from the**
25 **provisions of section 33.080, RSMo, specifically as they relate to the**
26 **transfer of fund balances to general revenue.**

27 **2. The contract indigent defense fund shall be administered by**
28 **the office of the Missouri state public defender, which shall have the**
29 **authority to:**

30 **(1) Enter into contracts with qualified private counsel for the**
31 **provision of indigent defense services;**

32 **(2) Process contract counsel payments and litigation expense**
33 **reimbursements from the contract indigent defense fund; and**

34 **(3) Make such rules as are necessary for the efficient**
35 **administration of the contract indigent defense fund. Any rule or**
36 **portion of a rule, as that term is defined in section 536.010, RSMo, that**
37 **is created under the authority delegated in this section shall become**
38 **effective only if it complies with and is subject to all of the provisions**
39 **of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This**
40 **section and chapter 536, RSMo, are nonseverable and if any of the**
41 **powers vested with the general assembly pursuant to chapter 536,**
42 **RSMo, to review, to delay the effective date, or to disapprove and annul**
43 **a rule are subsequently held unconstitutional, then the grant of**
44 **rulemaking authority and any rule proposed or adopted after August**
45 **28, 2007, shall be invalid and void.**

46 **3. Employees of the Missouri state public defender system and**
47 **members of the public defender commission may not serve as contract**
48 **counsel.**

49 **4. This fund shall not be used to provide legal services to persons**
50 **charged with county or municipal ordinance violations or misdemeanor**
51 **offenses in which the accused is not facing the possibility of jail time**
52 **if found guilty or pleading guilty. Nor shall the fund be used to provide**
53 **legal services to persons who are a party in a criminal child support**
54 **enforcement action in which the accused is not facing the possibility of**

55 jail time or imprisonment if found or pleading guilty.

600.092. Notwithstanding any other provision of law to the
2 contrary, no defender or contract counsel shall be required to provide
3 legal services to an eligible person for a violation of probation unless
4 such violation could result in the charging of a separate offense.

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